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THE SENATE OF CANADA



PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
NATURAL RESOURCES

To whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board."

The Honourable Cyrille Vaillancourt, *Chairman*

No. 3

TUESDAY, JULY 14, 1959



WITNESSES:

Mr. Douglas M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce;

Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

REPORT OF THE COMMITTEE.

THE QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1959

THE STANDING COMMITTEE ON
NATURAL RESOURCES

The Honourable CYRILLE VAILLANCOURT, Chairman

The Honourable Senators

*Aseltine	Emerson	Paterson
Barbour	Farquhar	Pearson
Basha	Fraser	Petten
Beaubien	Gladstone	Power
Bois	Haig	Raymond
Bouffard	Hayden	Stambaugh
Buchanan	Higgins	Taylor (<i>Norfolk</i>)
Burchill	Horner	Taylor (<i>Westmorland</i>)
Cameron	Kinley	Turgeon
Comeau	*Macdonald	Vaillancourt
Crerar	McDonald	Vien
Davies	McKeen	Wood—40
Dessureault	McLean	
Dupuis	Méthot	

(Quorum 9)

**ex officio* member.

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate for Wednesday, June 17th, 1959.

Pursuant to the Order of the Day, the Senate resumed the adjourned debate on the motion of the Honourable Senator Thorvaldson, seconded by the Honourable Senator Aseltine, for second reading of the Bill C-49, intituled: "An Act to provide for the Establishment of a National Energy Board".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Thorvaldson moved, seconded by the Honourable Senator Pearson, that the Bill be referred to the Standing Committee on Natural Resources.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

TUESDAY, July 14, 1959.

Pursuant to adjournment and notice the Standing Committee on Natural Resources met this day at 10.30 a.m.

Present: The Honourable Senators: Vaillancourt, *Chairman*; Aseltine, Buchanan, Davies, Higgins, Horner, Kinley, Macdonald, McDonald, Methot, Stambaugh and Turgeon—(12).

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the official reporters of the Senate.

Bill C-49, An Act to provide for the Establishment of a National Energy Board, was further read and considered clause by clause.

On Motion of the Honourable Senator McDonald it was RESOLVED to further amend the Bill as follows:—

2. *Page 2:* Strike out paragraph (h) of clause 2 and substitute therefor: “(h) “international power line” means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada;”

Further heard in explanation of the Bill were: Mr. D. M. Fraser, Director, Energy Studies Branch, Department of Trade and Commerce and Mr. E. A. Driedger, Assistant Deputy Minister of Justice.

In attendance but not heard: Mr. G. W. Green, Energy Studies Branch, Trade and Commerce.

It was RESOLVED to report the said Bill with two amendments.

At 11.15 a.m. the Committee adjourned to the call of the Chairman.

Attest.

Gérard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

TUESDAY, July 14, 1959.

The Standing Committee on Natural Resources to whom was referred the Bill (C-49), intituled: "An Act to provide for the Establishment of a National Energy Board", have in obedience to the order of reference of June 17, 1959, examined the said Bill and now report the same with the following amendments:

1. *Page 2*: Strike out paragraph (h) of clause 2 and substitute therefor: "(h) "international power line" means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada;"

2. *Page 25, line 19*: Immediately after "years," insert "from a date to be fixed in the licence,"

All which is respectfully submitted.

CYRILLE VAILLANCOURT,
Chairman.

THE SENATE
STANDING COMMITTEE ON NATURAL RESOURCES
EVIDENCE

OTTAWA, Tuesday, July 14, 1959.

The Standing Committee on Natural Resources, which was instructed to study Bill C-49, to provide for the establishment of a National Energy Board, met this day at 10.30 a.m.

Senator Vaillancourt in the Chair.

The CHAIRMAN: Honourable senators, we now have a quorum. Clauses 2(h) and 2(m) were allowed to stand at our previous hearing. Mr. Fraser, have you some explanation to make?

Mr. FRASER: Yes.

Mr. Chairman and honourable senators, when last this committee sat, you will recall that several clauses were stood over. Immediately after the rising of that committee meeting, Mr. Driedger, Mr. Green and I called upon the minister and discussed with him the points which had been raised. Later we had the benefit of the assistance of Senator Brunt in explaining some of the points that had been discussed amongst the senators, and subsequently obtained the instructions of the minister. Mr. Driedger has drawn a note setting forth very carefully the understandings which were reached with the minister, and with your permission I shall call on Mr. Driedger and ask him to present that note to you.

Senator BRUNT: Could we start with 2(h).

Mr. DRIEDGER: Yes. The Minister approves of an amendment as follows:

‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada.

Senator ASELTINE: What does that mean?

Senator HIGGINS: How does it improve the situation? How does it change it?

Mr. DRIEDGER: Under that it is, I think, clear that the facilities must be constructed, or must be operated, for the purpose of transmitting power from Canada to a place outside. We have added the purpose. Under the present definition it says merely “facilities for the transmission of power”; now, it is “facilities constructed or operated for the purpose”. That would not include facilities that are constructed or that are operated for some other purpose. It would include only facilities that are constructed or operated for this very purpose of transmitting power from a place inside Canada to a place outside Canada.

Senator McDONALD (Kings): Under this amendment the provincial rights will be protected?

Senator MÉTHOT: You have put in a word—it is for that very purpose. I had something in my mind which would be the same thing, but an international power line wholly situated in Canada does not become an international power line if it delivers power inside Canada. You have put in the word “facilities”,

which can mean many things, and you have put in the purpose. But, suppose it is for the two purposes. Suppose it is for the purpose of delivering electricity in the province and of delivering electricity outside of the province at the same time?

Senator BRUNT: Could we not remove all doubt in regard to provincial rights? We do not want any doubt. Could not all doubt be removed by adding the word "sole"? Could it not be "for the sole purpose of transmitting power from any place in Canada to any place outside Canada"?

Mr. DRIEDGER: We did consider something along those lines, but, you see, sir, the difficulty there. Just to carry this to an extreme case, it could be that a power company might take one line and connect it to one light bulb to illuminate its power station. In that case it would not be solely for the purpose of exporting power. You could very easily escape the definition by adding some other purpose.

Senator BRUNT: But, there are no Canadian power companies that have plants, offices, yards or equipment in the United States. How would the lighting of a bulb—would it not have to be in the United States?

Mr. DRIEDGER: No, I am suggesting that if they lit a bulb on the Canadian side then they could say it is not exclusively for export purposes.

Senator BRUNT: You mean on this subline.

Mr. DRIEDGER: Yes.

Senator MÉTHOT: Would you mind taking what I had in mind, leaving everything as it is now? According to the interpretation section the definition of an international power line means facilities for the transmission of power from any place in Canada to any place outside Canada. Then, however, a power line wholly situated in Canada does not become an international power line if it delivers power inside Canada for export purposes.

Does this mean that a power plant, let us say, in Niagara Falls, Ontario, will produce electricity and will deliver the power inside of Ontario, and then another company will be formed to take the power and deliver it in the United States? It will mean the Government of Canada will have absolute jurisdiction over the second company but will not touch the first company, the Ontario Hydro Company? We accept the fact that you control in every sense the export but in the amendment you use the word "purpose". Let us say they use the main power in the province in question but they send a little bit of it to the United States. Is your amendment going to take effect there?

Mr. DRIEDGER: I might say we did consider that aspect and did discuss it with the Minister, and I am afraid that all I am authorized to put before you on behalf of the Minister is the amendment I have here. I might add, however, my own comment to the example you gave to illustrate the difficulties we have had in approaching it from that point of view. Supposing you had a power development in Canada for the sole and avowed purpose of delivering power only to the United States and not to Canada. They construct a power plant. They lead their power to within six inches of the border. No power is taken off anywhere in Canada, yet under your proposed amendment that would not be an international power line.

Senator MÉTHOT: I admit that at once.

Mr. DRIEDGER: And yet the only purpose and the only thing that power plant would do would be to export power.

Senator MÉTHOT: Yes, but the Government of Canada will not lose control any more because the moment they export, then Ottawa takes the control of that part which is used to export, and I think all the rights of Canada are preserved. Otherwise, supposing that company decided to exploit such a river and the provinces of Ontario and Quebec say it is good, and Ottawa says

it is not powerful enough, for example, not important enough, although you have the rights within the law, then you will have prevented a province from building a power line on the river where it chooses to build it, and will have prevented them from expropriating. In those two cases if the line is built, even if the power is built for export you will control 100 per cent; you may not control the construction, but you will control the exportation in both cases.

Senator BRUNT: Mr. Fraser and Mr. Driedger, is there anything in this bill that controls in any way the development of electric power? Because if not, then I do not think Senator Méthot need worry.

Mr. DRIEDGER: Well, the bill does not as such control the development of electric power, but only the construction of international power lines, not the development of a power plant. That is dealt with in sections 40 to 43, and there is also Part VI, which deals with the export of power.

Senator BRUNT: I may be wrong, but as I recall there is no section here that I have come across that deals with the development of power in Canada.

Senator MÉTHOT: Section 22(1) says:

The Board shall study and keep under review matters over which the Parliament of Canada has jurisdiction relating to the exploration for, production, recovery, manufacture, processing, transmission, transportation, distribution, sale, purchase, exchange and disposal of energy and sources of energy within and outside of Canada, shall report thereon from time to time to the Minister and shall recommend to the Minister such measures within the jurisdiction of the Parliament of Canada as it considers necessary or advisable in the public interest for the control, supervision, conservation, use, marketing and development of energy and sources of energy.

There is also provision in some cases supposing the Government of Canada decide that such power should not be developed and the province decides it should be developed.

Senator BRUNT: I think Senator Methot is overlooking these words—"matters over which the Parliament of Canada has jurisdiction". Well, you have not got jurisdiction now. This section surely does not give it to you.

Mr. FRASER: In addition to that, these are advisory functions. These are "matters over which the Parliament of Canada has jurisdiction" which the board shall study. There is no power here to control.

Senator BRUNT: The second section goes on to deal with studies and reports.

Mr. FRASER: But nowhere is there in Part II the power to regulate.

Senator BRUNT: Well, I cannot recall having seen this in the bill, but if this bill has no jurisdiction over the development of hydro power in Canada then I think our amendment to 2(h) is all right.

Senator MÉTHOT: Yes—but if we link section 22 with section 44. In section 44 it says:

The Board may, subject to the approval of the Governor in Council, issue a certificate in respect of a pipe line or an international power line if the Board is satisfied that the line is and will be required by the present and future public convenience and necessity, and, in considering an application for a certificate, the Board shall take into account all such matters as to it appear to be relevant, and without limiting the generality of the foregoing, the Board may have regard to the following:

(a) the availability of oil or gas to the pipe line, or power to the international power line, as the case may be;

So, section 44 and section 22 gives me the impression that you have control.

Mr. FRASER: Mr. Chairman, let us first dispose of section 22. There is no control function in section 22, absolutely no regulatory power there at all. In section 44, I submit with respect, the only regulatory power which is assigned to the board is, in so far as power is concerned, over the construction of an international power line as defined, and we are here proposing this morning an amendment to the definition of international power line designed to set at rest any fears that honourable senators may have that there was any thought of imposing or encroaching in any fashion whatsoever upon provincial rights. We have attempted to do in this bill nothing more than what has been done since 1907 under the Exportation of Power and Fluids and the Importation of Gas Act, in which, if you look at section 3 (1), it reads as follows:

"3 (1) Subject to the regulations and to such terms and conditions as the Governor in Council may approve with respect to each licence, licences may be granted for

(a) the exportation of power and fluids;

(b) the importation of gas; and

(c) the construction or placing of any line of wire or other conductor for the exportation of power."

Now, what is here proposed, Mr. Chairman, is somewhat different wording for precisely the same intent, not to tell the provinces what they may or may not do about the construction of power plants, but only to exercise control over the construction of international power lines which are essentially for the export of power, which is clearly within the jurisdiction of the federal Parliament.

Senator HIGGINS: Is every portion of a line transmitting power abroad to be known as an international line, that is, every portion of it? Suppose that there is an electric producing plant in one location say A, and another different company generating electricity right near the border, at B, and A sends power through a line down to B for the purpose of giving them electricity to transmit to the United States. That is a possible situation, is it not?

Mr. FRASER: Yes, it is.

Senator HIGGINS: Is the portion of the power line between A and B to be classified as an international power line, or is it only the portion which sends it finally to the United States, that is between B and the border? In other words, is every intermediate part of that power line to be known as an international power line?

Mr. FRASER: No. Our proposed definition will cover only such part of it as is "constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada."

Senator HIGGINS: Well, in the illustration I gave company A is doing that.

Mr. FRASER: Well, that is a conceivable situation.

Senator HIGGINS: Will the line between A and B be known as an international power line?

Mr. FRASER: If it is operated or constructed for the purpose of transmitting power, to a place outside Canada, yes.

Senator HIGGINS: Then, if company A does not send a bit of power outside of Canada it still operates as an international power line?

Senator BRUNT: What is that?

Senator HIGGINS: Suppose there is an electric power company at A which sends power to another company B for transmission to the United States. That

is possible. What I want to know is, is this portion of the line between A and B to be known as an international power line?

Senator BRUNT: If it is built for the purpose of exporting power, yes.

Senator HIGGINS: It is built for the purpose of supplying company B with power to send to the United States. I can see some lawyer arguing this point at some future time, and we might as well get it settled now.

Senator BRUNT: You say that company A sends power to company B for the sole purpose of exporting it?

Senator HIGGINS: Yes.

Senator BRUNT: Then it has got to come under federal control.

Senator KINLEY: Do they not have to obtain a permit from the board before they can export any power?

Mr. FRASER: Yes.

Senator KINLEY: Why then would an international power line or a power company be defined as one that exports power? The permit governs the whole thing, does it not? If you export power you are an exporter and you become an international power line.

Mr. FRASER: You mean, would we then bring all the operations of that company under the control of the act? That is not what we want to do.

Senator KINLEY: But to export power, it all has to be done in accordance with the act, has it not?

Mr. FRASER: Just in respect to the export, not in respect to the power supply to the domestic market.

Senator HIGGINS: But in my example company A is not exporting the power, it is selling it to company B, another company altogether.

Senator BRUNT: I thought you said company A was transmitting power to company B for export.

Senator MÉTHOT: Let us set aside the imaginary case and take up a real situation. In the Niagara peninsula the Hydro Electric Power Commission of Ontario and an American company located in New York state are actually connected by power lines.

Mr. FRASER: That is correct.

Senator MÉTHOT: So, electricity is being produced in Ontario which is used in Ontario for the most part but at certain times, depending upon the load, power may be transmitted to the United States, and under the law as it is, Ontario Hydro comes under federal jurisdiction. Now, with the amendment, if you do not include the words "very purpose" I am afraid that that will occur again. If we adopt the amendment that I propose there would be no doubt.

Mr. FRASER: With deference, Mr. Chairman, I suggest that the wording we have proposed would bring under the jurisdiction of this act only those facilities of Ontario Hydro which were constructed or operated for the purpose of exporting power, and in practice that may be only a few feet of line across the river, and only to that extent does the federal authority impinge upon Hydro's operation, and this in fact is the situation which now exists.

Senator MÉTHOT: And we are ready to admit that the Government of Canada should have the control? But, words are words. We know what we want. I thought that the wording of the amendment that I proposed would clear the matter: My amendment reads: "However, a power line wholly situated in Canada does not become an international power line if it delivers power inside Canada for export purposes." Then, even if the company does produce part of the electricity for export purposes, they come under

the control of the federal jurisdiction the moment they export to the United States.

Senator BRUNT: Let us follow that one step further. Ontario Hydro has a development at Niagara Falls. They decide that they want to export power to the United States so they build a line to Fort Erie down the river, 12 miles away. Then the American company comes over and connects up at Fort Erie. Now, under your argument that line that the Ontario Hydro built from Niagara Falls to Fort Erie is wholly located within Canada, it is used to transmit export power and you say there should be no control over it?

Senator MÉTHOT: It will, if the delivery of the power in Canada is for export, and the moment the power is taken in Canada it has to be by another company, so it must come under the control of the board. Would you read your amendment again, Mr. Driedger?

Mr. DRIEDGER: The proposed amendment reads as follows:

"‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada”.

Perhaps I might be permitted an observation. Part VI, on page 24, deals with exports and imports—that part deals with the export of power. Part III deals with the construction of international power lines. Part III commencing at page 9. So that as far as power is concerned you have the two aspects in this bill, the construction of international power lines and secondly the export of power.

Under the amendment that Senator Méthot has suggested the effect would be to remove power, I should think, completely from Part III so that there would no longer be any provision in the bill applicable to the construction of international power lines and there would be left in relation to power only Part VI which deals with the export of power. That would be my understanding of the proposal you make.

Senator MÉTHOT: Is it necessary for the Government of Canada to cover also the construction of power plants?

Mr. DRIEDGER: Well, with regard to that, all I can say is that that is a matter of Government policy and in that respect there is no change in this bill from what is the law today, because the jurisdiction over international power lines is now regulated under another statute that has been in force for a long time, in perhaps different terms and in a slightly different way, but in that respect this bill makes no change.

Senator McDONALD (*Kings*): Mr. Chairman, I think that the amendment submitted by the department is about the best we can get which will protect provincial rights, and I suggest that we adopt the proposed amendment which reads:

"‘international power line’ means facilities constructed or operated for the purpose of transmitting power from any place in Canada to any place outside Canada”.

I move that that amendment be adopted.

The CHAIRMAN: Is it agreeable to the committee?

Senator MÉTHOT: You could not put the word “very” in there, could you? We die hard.

Hon. SENATORS: Agreed.

Carried.

The CHAIRMAN: Now we will take up clause 2, paragraph (m).

Mr. DRIEDGER: Mr. Chairman, clause 2, paragraph (m)—the wording in this paragraph follows verbatim the language of Head 10 of section 92 of the British North America Act, and that says:

"10. Local Works and Undertakings other than such as are of the following Classes:—

(a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:"

Therefore, it follows, that the matters specified in paragraph (m) of clause 2 are within the exclusive legislative jurisdiction of Parliament, and hence outside the jurisdiction of the provincial legislatures. Conceivably, there could be difficulty in determining whether a particular line falls within the definition, but there can be no doubt that if it does it is under the exclusive jurisdiction of Parliament.

Senator BRUNT: That is under the British North America Act?

Mr. DRIEDGER: Yes.

Senator BRUNT: Well, if we amended the B.N.A. Act this morning, we would be doing something.

The CHAIRMAN: Is the section satisfactory?

Carried.

The CHAIRMAN: Clause 19?

Senator BRUNT: I was the one who asked that it stand. I am now content with it in its present form, because it is only used in exceptional circumstances. It is an additional right that is being given, is that not so?

Mr. DRIEDGER: Yes.

Senator BRUNT: I am not a member of the committee.

Carried.

The CHAIRMAN: Clauses 40 to 43 inclusive?

Mr. DRIEDGER: They are consequential on the passage of paragraph (h) of clause 2.

Senator BRUNT: When that paragraph is straightened out, the others fall into line.

Senator McDONALD (*Kings*): Does that apply to all the sections that were stood over, namely, 19, 40, 41, 42, 43, 58, 76, 77, 88 and 96? Are all those consequential?

Mr. DRIEDGER: Most of them are, sir, with the exception of clauses 58 and 76; they were not contingent on the definition in paragraph (h) of clause 2. I believe the others were all consequential.

Senator McDONALD (*Kings*): Clauses 58 and 76 will still have to be dealt with.

Mr. DRIEDGER: I have some comments on those.

The CHAIRMAN: Will clauses 40, 41, 42 and 43 carry?

Carried.

The CHAIRMAN: Clause 58?

Mr. DRIEDGER: I believe there was some discussion as to the effect of this clause. It limits the liability only as between the carrier, the shipper and the consignee, and cannot affect the rights or liabilities of other persons. The exemption applies only if it is approved by the board or if it is included as a

term or condition of the tariffs of the company as filed with the board. Such a term or condition can of course apply only to the parties to the contract. The previous amendment was made on the recommendation of the parties affected.

Senator MÉTHOT: You mean the amendment that was made to the bill between first reading and the passage of the measure by the other house?

Mr. DRIEDGER: Yes.

Senator MÉTHOT: No objection on my part.

The CHAIRMAN: Shall clause 58 carry?

Carried.

The CHAIRMAN: Clause 76?

Mr. DRIEDGER: Under this clause the approval of the board is required before a company could cross a provincial utility. This requires an application to the board, and it is expected that the board will give the province or utility concerned an opportunity of stating its cases. Failure to do so would probably subject the order of approval to attack by prerogative writ in the Exchequer Court under clause 19.

In any case, if any unforeseen difficulties are encountered in the operation of this clause the minister will be willing to consider an appropriate amendment at a future session.

Senator MÉTHOT: May I ask whether there is a big difference between clause 76 and Articles 256, 258, 273, 375 and 378 of the Railway Act.

Mr. DRIEDGER: There is a difference in principle. This is more closely related to the expropriation provisions, rather than some of the provisions in the Railway Act dealing with the operation of power lines by railway companies and so on. This is more comparable to the provisions in the Railway Act, and in this act, dealing with the taking over of land, or the rights of or interests in land. In all of those cases one goes to the board, and the board takes into account representations of all persons concerned.

Senator BRUNT: In other words, if any provincial body is going to be hurt under this clause as it is now drawn, the minister is quite willing to give consideration to an appropriate amendment.

Mr. DRIEDGER: Yes.

Senator BRUNT: And I suppose he would make it retroactive to cover any injustice that might have taken place under this clause?

Mr. DRIEDGER: No doubt he would take it into consideration.

The CHAIRMAN: Shall section 76 carry?

Carried.

The CHAIRMAN: Section 88.

Mr. DRIEDGER: I understand the remaining clauses are consequential on the power provisions?

Carried.

The CHAIRMAN: Section 96?

Carried.

The CHAIRMAN: Shall I report the bill as amended?

Carried.

—Whereupon the committee adjourned.